

2011 WL 12455227 (W.Va.Cir.Ct.) (Trial Filing)
Circuit Court of West Virginia.
Kanawha County

Tom DOUGLAS, et al,
v.
MANOR CARE, INC., et al.

No. 10-C-952.
July 20, 2011.

Jury Demanded

Pretrial Memorandum

Tom Douglas, Individually and on behalf of the Estate of Dorothy Douglas, McHugh Fuller Law Group, PLLC, James B. McHugh, West Virginia Bar Number 10350, Michael J. Fuller, Jr., West Virginia Bar Number 10150, [D. Bryant Chaffin](#), West Virginia Bar Number 11068, 97 Elias Whiddon Rd., Hattiesburg, MS 39402, Telephone: 601-261-2220, Facsimile: 601-261-2481, for plaintiff.

Pretrial Information Submitted by:

Plaintiff: Tom Douglas, Individually and on behalf of the Estate and Wrongful Death Beneficiaries of Dorothy Douglas

Defendant: Manor Care, Inc.; HCR Manor Care Services, Inc.; Health Care and Retirement Corporation of America, LLC; Heartland Employment Services, LLC; Danny Davis; Jeffery A. Smith
Attorney for Plaintiff: Michael J. Fuller, Jr., Esq., WV Bar No. 10150

James B. McHugh, Esq., WV Bar No. 10350

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Attorney for Defendant(s): Charles F. Johns, Esq.

Paul A. Konstanty, Esq.

Steptoe & Johnson, PLLC

400 White Oaks Blvd.

Bridgeport, WV 26330

Trial Date: July 25, 2011 @ 9:00 a.m. (ET)

Pretrial Date: July 19, 2011 @ 9:00 a.m. (ET)

Plaintiff's Statement of known material facts that the Plaintiff will prove at the Trial:

a. On or about September 4, 2009, Dorothy Douglas at the age of 87 was admitted to Heartland of Charleston, which is owned, operated managed, and/or controlled by Defendants. As a resident of Heartland of Charleston, Defendants owed Dorothy Douglas a duty to exercise reasonable care, consistent with her age and physical condition, to assess her care needs, and on the basis of that assessment, to plan for and provide the care and services reasonably necessary for Dorothy Douglas to attain or maintain her highest practicable physical, mental, and psychosocial well-being, in a manner and in an environment that promoted maintenance or enhancement of her quality of life and personal dignity. In doing so the Defendants deviated repeatedly throughout the residency of Dorothy Douglas from the standard of care and also from the terms of the admission agreement, state statutes and/or rules, and applicable federal statutes or regulations.

At the time she became a resident, Defendants were aware of Dorothy Douglas' condition and represented to her and her family that they would and could care for her needs. At the time these representations were made, Defendants were aware that Heartland of Charleston had staffing problems, was short of needed staff, was poorly managed, and could not adequately care for residents. However, Defendants accepted Dorothy Douglas as a resident and billed and received payment for her care. Defendants failed to provide adequate care and supervision to Dorothy Douglas, failed to appropriately assess Dorothy Douglas' care needs or plan for her care, and they failed to follow doctor's orders concerning her care. As a result, Dorothy Douglas suffered from dehydration, irreversible change in mental status, acute renal failure and death. She endured abuse, neglect, horrible physical pain and suffering, mental and emotional anguish, humiliation, fright, loss of dignity and loss of quality of life, declined in physical and mental condition, and ultimately death due to the acts and omissions of Defendants, their agents, servants, employees and consultants.

Manor Care, Inc.; HCR Manor Care Services, Inc.; Health Care and Retirement Corporation of America, LLC, Heartland Employment Services, LLC, were the corporate owners, operators, managers and/or controllers of Heartland of Charleston. These Defendants directly controlled the operations at Heartland of Charleston, established the facility's budget, controlled its bank accounts, made all of its disbursements, hired its administrator, established its policies and procedures (including policies governing nursing care), and supervised the conduct of its operations through management-level employees.

Danny Davis and Jeffery A. Smith were the administrators of Heartland of Charleston during Dorothy Douglas' residency. As the administrator, Defendants Davis and Smith owed an independent duty to the residents, including Dorothy Douglas, to plan, organize, direct and control on a day-to-day basis all of the care and services required by residents of Heartland of Charleston. Despite these duties, Defendants Davis and Smith failed to ensure that the facility provided adequate staffing, that staff were appropriately trained and supervised, that residents received the care for which the facility was responsible and for which it was being paid, and that appropriate policies and procedures were followed for the safety and well-being of residents, including Dorothy Douglas.

Defendants consciously and deliberately pursued a common plan and/or design in the operation of Heartland of Charleston that resulted in the injuries suffered by Dorothy Douglas. The Defendants followed a continuing and pervasive pattern of conduct in which they deliberately closed their eyes and ears to the poor quality of care at their nursing home and sought to maximize their income at the expense of residents. Such conduct was willful, wanton, reckless, and shocks the conscience and warrants the imposition of punitive damages.

4. Plaintiff's theories of liability:

a. Corporate Negligence Against Nursing Home Defendants; The failure to act as a reasonably prudent person/corporation would in the same or similar situation. This negligence claim relates directly to the manner in which these corporations executed their management and/or control over the facility, their allocation of resources, and their failure to address systemic problems within Heartland of Charleston.

b. Negligence Claim Against Administrator Defendants; General Negligence against the administrator, this includes but is not limited to the improper management and oversight of the nursing home causing a condition and atmosphere that placed the residents including Dorothy Douglas in harm's way and did therefore result in harm to Dorothy Douglas. As a licensed nursing home administrator in West Virginia Danny Davis and Jeffery A. Smith each had a non-delegable duty to the residents of this nursing home including Dorothy Douglas.

c. Nursing Home Violations Against Nursing Home Defendants ([W. Va. Code §16-5C-15](#)); The failure of the Corporate Defendants to comply with any and all rights or benefits created or established for the well-being of nursing home residents, including Dorothy Douglas, by the terms of any contract, by any state statute or rule, or by any applicable federal statute or regulation, and as such shall be liable to Dorothy Douglas for injuries suffered as a result of such deprivations.

d. Medical Malpractice Against Nursing Home Defendants ([W. Va. Code §55-7B-1](#)); The failure of Corporate Defendants to operate a "health care facility", as defined within the MPLA, as a reasonably prudent "health care facility" would in the same or similar situation. Additionally the Corporate Defendants failed to provide Dorothy Douglas with adequate and appropriate health care during her residency at their facility.

e. Malice and/or Gross Negligence Which Evidences a Willful, Wanton or Reckless Disregard for the Safety of Dorothy Douglas Against all Defendants; Plaintiff's assertion for punitive damages against all Defendants.

f. Fraud Against Nursing Home Defendants; The failure of the Defendants to provide accurate and complete information to Dorothy Douglas and her family upon admission as to the operational aspect of the facility. Additionally, throughout Dorothy Douglas' residency the Defendants intentionally kept material information related to the care of Dorothy Douglas from her and her family.

g. Breach of Fiduciary Duty Against Nursing Home Defendants; Breach of Fiduciary Duty against all Defendants, this includes but is not limited to Defendants placing themselves in a position of a fiduciary as it relates to Dorothy Douglas and then failing to protect her from known harms which Defendants themselves created.

h. Premises Liability Claim Against All Defendants; This includes but is not limited to Defendants intentionally and knowingly causing the nursing home to be operated in such a manner as to cause repeated/systemic failures creating dangerous conditions from which the residents including Dorothy Douglas was exposed to and suffered from. See Justice Davis' concurring opinion in *Riggs v. West Virginia University Hospital, Inc.*, 221 W. Va 646 (2007)

i. Violation of the West Virginia Consumer Credit and Protection Act Against Nursing Home Defendants ([W. Va. Code §46A-6-101](#)); Defendants intentionally represented to Dorothy Douglas, her family, and the general public that their services were of a particular standard, quality or grade when Defendants knew their services were not.

5. Plaintiff's statements of any issues of fact known to Plaintiff which will be contested:

- a. Whether Defendants, or one or more of them, or one or more of their agents, servants or employees, failed to provide nursing care, treatment and services sufficient to ensure that Dorothy Douglas attained and maintained her highest level of physical, mental and psychosocial well-being;
- b. Whether Defendants, or one or more of them, or one or more of their agents, servants or employees, failed to provide Dorothy Douglas with adequate fluid intake to prevent dehydration;
- c. Whether Defendants, or one or more of them, or one or more of their agents, servants or employees, failed to properly assess Dorothy Douglas for the risk of development of infections;
- d. Whether Defendants, or one or more of them, or one or more of their agents, servants or employees, failed to adequately and timely assess, monitor and/or treat the development and progression of skin breakdown and infection in Dorothy Douglas;
- e. Whether Defendants, or one or more of them, or one or more of their agents, servants or employees, failed to provide and ensure that Dorothy Douglas received adequate hygiene and sanitary care to prevent skin breakdown and infections from developing and progressing;
- f. Whether Defendants, or one or more of them, or one or more of their agents, servants or employees, failed to provide adequate turning and repositioning of Dorothy Douglas in order to provide pressure relief so as to prevent the formation of skin breakdown on her body and infections;
- g. Whether Defendants, or one or more of them, or one or more of their agents, servants or employees, failed to provide Dorothy Douglas with adequate weekly skin assessments in order to identify so as to prevent the formation or worsening of skin breakdown on her body;
- h. Whether Defendants, or one or more of them, or one or more of their agents, servants or employees, failed to provide proper custodial care, and to prescribe and administer proper medication to prevent Dorothy Douglas' existing medical conditions from worsening to the point of becoming life-threatening;
- i. Whether Defendants, or one or more of them, or one or more of their agents, servants or employees, failed to provide even the minimum number of staff necessary to assist the residents with their needs;
- j. Whether Defendants, or one or more of them, or one or more of their agents, servants or employees, failed to provide even the minimum mandatory staff required by the State of West Virginia;
- k. whether Defendants, or one or more of them, or one or more of their agents, servants or employees, failed to protect Dorothy Douglas from harm within the facility;
- l. Whether Defendants, or one or more of them, or one or more of their gent servants or employees, failed to respond to significant signs and symptoms of change in the condition of Dorothy Douglas;
- m. Whether Defendants, or one or more of them, or one or more of their agents, servants or employees, failed to properly notify the family of Dorothy Douglas of significant changes in her health or mental status;
- n. Whether Defendants, or one or more of them, or one or more of their agents, servants or employees, failed to properly notify the attending physician upon significant changes in Dorothy Douglas' condition;

- o. Whether Defendants, or one or more of them, or one or more of their agents, servants or employees, failed to develop, implement, and update an adequate and appropriate resident care plan to meet the needs of Dorothy Douglas;
- p. Whether Defendants, or one or more of them, or one or more of their agents, servants or employees, failed to maintain appropriate records, including obvious failure to monitor and document significant changes in Dorothy Douglas' condition;
- q. Whether Defendants, or one or more of them, or one or more of their agents, servants or employees, failed to provide sufficient numbers of qualified personnel, including nurses, licensed practical nurses, certified nurse assistants, and medication aides (nursing personnel) to meet the total needs of Dorothy Douglas;
- r. Whether Defendants, or one or more of them, or one or more of their agents, servants or employees, failed to increase the number of personnel to ensure that Dorothy Douglas:
 - i. Received timely and accurate care assessments;
 - ii. Received prescribed treatment, medication, and diet;
 - iii. Received necessary supervision; and
 - iv. Received timely intervention due to a significant change in condition.
- s. Whether Defendants, or one or more of them, or one or more of their agents, servants or employees, failed to provide nursing personnel sufficient in number to ensure that Dorothy Douglas attained and maintained her highest level of physical, mental and psychosocial well-being;
- t. Whether Defendants, or one or more of them, or one or more of their agents servants or employees, failed to provide adequate supervision to the nursing staff so as to ensure that Dorothy Douglas received adequate and proper nutrition, fluids, therapeutic diet, sanitary care treatments and medications, and sufficient nursing observation and examination of the responses, symptoms, and progress in the physical condition of Dorothy Douglas;
- u. Whether Defendants, or one or more of them, or one or more of their agents, servants or employees, failed to adequately assess, evaluate and supervise nursing personnel so as to ensure that Dorothy Douglas received appropriate nursing care, in accordance with Defendants' policy and procedures manual, and the statutorily mandated regulations implemented by OBRA, and the West Virginia Division of Health and its agents, as set forth in part by the Nursing Home Licensure Rules, 64CSR13;
- v. Whether Defendants, or one or more of them, or one or more of their agents, servants or employees, failed to provide nursing staff that was properly staffed, qualified, and trained;
- w. Whether Defendants, or one or more of them, or one or more of their agents, servants or employees, failed to provide and ensure an adequate nursing care plan based on the needs of Dorothy Douglas;
- x. Whether Defendants, or one or more of them, or one or more of their agents, servants or employees, failed to provide and ensure adequate nursing care plan revisions and modifications as the needs of Dorothy Douglas changed;
- y. Whether Defendants, or one or more of them, or one or more of their agents, servants or employees, failed to implement and ensure that an adequate nursing care plan for Dorothy Douglas was followed by nursing personnel;

z. Whether Defendants, or one or more of them, or one or more of their agents, servants or employees, failed to adopt adequate guidelines, policies, and procedures for documenting, maintaining files, investigating, and responding to any complaint regarding the quantity of resident care the quality of resident care, or misconduct by employees, irrespective of whether such complaint derived from a state survey agency, a resident of said facility, an employee of the facility or any interested person;

aa. Whether Defendants, or one or more of them, or one or more of their agents, servants or employees, failed to take reasonable steps to prevent, eliminate and correct deficiencies and problems in resident care;

bb. Whether Defendants, or one or more of them, or one or more of their agents, servants or employees, failed to provide Dorothy Douglas with adequate and appropriate observation and examination following an injury so as to timely and adequately provide appropriate emergency medical care;

cc. Whether Defendants, or one or more of them, or one or more of their agent, servants or employees, failed to properly and timely notify Dorothy Douglas's attending physician of significant changes in her physical condition, to wit: the development of skin breakdown, malnutrition, weight loss, dehydration, infections, and persistent, unresolved problems relating to the care and physical condition of Dorothy Douglas resulting in needless hospitalization, and unnecessary pain, agony, and suffering on the part of Dorothy Douglas;

dd. Whether Defendants, or one or more of them, or one or more of their agents, servants, or employees failed to develop and/or properly implement specific policies and procedures for necessary areas of nursing home operations and/or critical areas of resident care.

ee. Whether Defendants, or one or more of them, or one or more of their agents, servants or employees intentionally limited budgets as to minimize the expense of staffing and increase profits;

ff. Whether Defendants, or one or more of them, or one or more of their agents. servants or employees, failed to provide Dorothy Douglas with adequate and appropriate observation and examination following an injury so as to timely and adequately provide appropriate emergency medical care;

gg. Whether Defendants, or one or more of them, or one or more of their agents, servants, or employees were aware of resident care issues;

hh. Whether Defendants, or one or more of them, or one or more of their agents, servants, or employees refused/declined to use or access available information on resident care issues for the benefit of residents including Dorothy Douglas;

ii. Whether Defendants, or one or more of them, or one or more of their agents, servants, or employees had knowledge of the dangerous conditions within the facility that put the residents at risk for harm.

jj. Whether Defendants, or one or more of them, or one or more of their agents servants, or employees chose to ignore the dangerous conditions within the facility that put the residents in harm's way.

kk. Whether Defendants, or one or more of them, or one or more of their agents, servants or employees, failed to provide a safe environment;

ll. Whether Defendants, or one or more of them, or one or more of their agents, servants or employees, failed to maintain medical records on Dorothy Douglas in accordance with accepted professional standards and practices that were complete, accurately documented, readily accessible, and systematically organized with respect to:

i. The diagnosis of Dorothy Douglas;

- ii. The treatment of Dorothy Douglas; and
 - iii. The assessment and establishment of appropriate care plans of care and treatment;
 - iv. The transfer of Dorothy Douglas to another facility upon request by her family.
 - mm. Whether Defendants, or one or more of them, or one or more of their agents, servants or employees, failed to adequately and appropriately monitor Dorothy Douglas and recognize significant changes in her health status;
 - nn. Whether Defendants owned, operated, managed, or controlled Heartland of Charleston during Dorothy Douglas's residency.
6. Plaintiff's statement of relevant issues of law supported by citations of statute or case law.
- a. Whether Defendants, or one or more of them, or one or more of their agents, servants or employees, failed to provide the appropriate standard of care to Dorothy Douglas while she was a resident of Heartland of Charleston and what that standard of care is;
 - i. Are all the activities provided at a nursing home considered to be the rendition of "Health Care" as set out in [W. Va. Code §55-7B-2\(e\)](#) or are some actions custodial in nature.
 - 1. Are the administrator, CNAs or any personnel other than the licensed medical nurses "Health care providers" as defined by [W. Va. Code § 55-7B-2\(g\)](#). *See also* [42 U.S.C. §§ 1395 et seq.](#), which reveals that a nurse's aide is not considered to be a "licensed health professional," which is limited by federal law to "a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapist, physical or occupational therapy assistant, registered professional nurse, licensed practical nurse, licensed or certified social worker, registered respiratory therapist, or certified respiratory therapy technician." [42 U.S.C. §§ 1395i-3\(b\)\(5\)\(A\),\(F\)-\(G\)](#), attached. *See also Riggs v. West Virginia University Hospitals, Inc.*, 221 W.Va. 646, 664-76, 656 S.E. 2d 91, 110-21 (W.Va. 2007) (Chief Justice Davis concurring).
 - ii. Do all of the Corporate Defendants qualify as a "Health Care Provider" and/or "Health Care Facility" as set out in [W. Va. Code §55-7B-2\(f & g\)](#).
 - 1. Do all of the Corporate Defendants get the protections of the MPLA if each Defendant does not qualify as a "Health Care Provider" and/or "Health Care Facility" as set out in [W. Va. Code §55-7B-2\(f & g\)](#), for their direct liability.
 - b. Are the Defendants responsible to Plaintiff under Nursing Home Act as set out in [W. Va. Code §16-5C-15\(c\)](#). *See State of West Virginia ex re. AMFM, Inc., et al. v. Hon. Louis H. Bloom*, No. 100705 (June 22, 2010), attached, where the West Virginia Supreme Court of Appeals by denial of the writ recognized the applicability of the Nursing Home Act (NHA) when dealing with resident protections, this was an arbitration matter wherein the trial court relied on the NHA in ruling the arbitration agreement was not enforceable.
 - c. Whether Defendants, can be held directly responsible for the actions and/or inactions as it relates to the operation of the nursing home above and beyond the vicarious liability imputed to them from "health care providers" providing direct care to Dorothy Douglas. *See Town of Fayetteville v. Law*, 201 W.Va. 205 (1997) and *Bowers v. Wurzburg*, 202 W.Va. 43 (1998).
 - d. Can a "health care provider" as defined in [W. Va. Code §55-7B-2\(f\)](#) be held liable under a premises liability claim for dangerous conditions which they have created. *See Riggs v. West Virginia University Hospital, Inc.*, 221 W.Va. 646 (2007), specifically the concurring opinion written by Justice Davis. *See also Hawkins v. United States Sports Association, Inc.* 219

W.Va. 275, (2006) as the Court explains that the elements in a premises case include “that the invitee has no knowledge of the substance or condition or was prevented by the owner from discovering it....”

e. Can Defendants be held liable for fraud for failing to provide material information about the operations of the nursing home that would affect the nursing home's ability to provide the appropriate care to Dorothy Douglas upon being admitted and throughout his residency? See *Kessel v. Leavitt*, 204 W.Va. 95, (1998).

f. Whether Defendants, or one or more of them, or one or more of their agents, servants or employees, was grossly negligent, willful, wanton, reckless or malicious in the discharge of any duty owed to Dorothy Douglas;

g. Whether the issue of awarding punitive damages should be submitted to the jury;

7. A list of all exhibits that Plaintiff may offer at Trial.

a. See Appendix “A” attached hereto.

8. A list of Plaintiff's lay and/or expert witnesses by deposition.

a. It is expected that the Plaintiff will offer by deposition at trial are Katherine Hoops, Linda White, David Parker and Paul Ormond as these persons do not reside in West Virginia. Plaintiff will also offer Dr. Sydnee McElroy and Robin Thompson by deposition.

9. A list of Plaintiff's other lay witnesses by name and address and a brief statement indicating the content and area of the testimony. Plaintiff has placed asterisks beside the names of those individuals whom she believes are likely to be called and will continue to amend this list as trial approaches.

a. See Appendix “B” attached hereto.

10. A list of Plaintiff's other expert witnesses by name and address including a brief statement of the expert's qualifications, and his area of expertise.

a. Dr. Loren Lipson, 953 South Pasadena Ave., Pasadena, CA 91105.

i. Dr. Lipson has been Board - Certified in Internal Medicine, Geriatric Medicine, and Utilization Review and Quality Assurance. He has been the Director of the USC Teaching Nursing Home Program and have been Co-Director of the Los Angeles County - USC Medical Center Adult Protection Team - Geriatric Assessment Clinic He also has been Chief of the Section of Geriatric Medicine at the Keck School of Medicine at the University of Southern California. At this institution, until recently, he has been Associate Professor of Medicine, Gerontology, Clinical Pharmacy, Medical Dentistry and Public Health, and Occupational Science and Occupational Therapy. He has been at this institution for over 28 years. He is now Professor Emeritus of Medicine. In addition, he is a consultant to the Department of Justice, State of California and New Mexico, the Office of the Inspector General, U. S. Department of Health and Human Services and United States Department of Justice in areas of geriatric care, **elder abuse**, and care of dependent adults. He has served as a Consultant to the Departments of Administration, Health and Social Services and Law, State of Alaska, in areas geriatric medicine and long-term care. He has also been the Physician Advisor to USC University Hospital in areas of utilization management and quality assurance.

ii. Dr. Lipson will be offered as an expert in causation, geriatric medicine, standard of care in a nursing home, and compliance with state and federal regulations.

b. Holly L. Brown, RN, 18707 101st Ave., NE, Bothell, WA 98011.

i. Ms. Brown is a licensed Geriatric Nurse Practitioner. She has worked in nursing since 1985 and as a Geriatric Nurse Practitioner in nursing home facilities since 1997. As such, she has provided direct nursing care to patients with a variety of illnesses in the nursing home setting, including wound care and infection control. In addition, she has been an Associate Faculty Member in the Gerontological Nurse Practitioner/Clinical Nurse Specialist Program at the Emory University School of Nursing in Atlanta, Georgia. She has also worked as the Practice Manager for the “Nurses Improving Care for Healthsystem Elders” (NICHE) program at the New York University College of Nursing in New York. She is currently the Director of Nursing at the Emerald Heights Nursing Home in Redmond, Washington.

ii. Ms. Brown will be offered as an expert in the standard of care in a nursing home and compliance with state and federal regulations.

c. Timothy G. Hammond, M.D., 508 Fulton St., Room A2038, Durham, NC 27705

i. Dr. Hammond is the Associate Chief of Staff - Research & Development at the Durham Veterans Administration Medical Center and a Professor of Nephrology in the Department of Internal Medicine at Duke University. He is Board Certified in Internal Medicine, Nephrology and Disability Analysis. Previously Dr. Hammond has been on staff at Veterans Administration Hospitals in Milwaukee, Wisconsin and New Orleans, Louisiana. He has also served on the faculty at the University of Wisconsin School of Medicine, Nephrology Section and at the Tulane University School of Medicine. In addition, Dr. Hammond has been appointed as a Principal Investigator for multiple National Aeronautical and Space Administration Space Shuttle missions.

ii. Dr. Hammond will be offered as an expert in nephrology, causation, medicine, standard of care in a nursing home, and compliance with state and federal regulations.

d. Lance R. Youles, 1555 Sexton Road, Howell, Michigan 48843

i. Mr. Youles is licensed by the State of Michigan as a Nursing Home administrator. He has over 20 years experience working in that capacity. He has worked for private for-profit and not-for-profit facilities. In addition, he has been appointed by the State of Michigan as a Facility Receiver for troubled facilities. Currently, he provides consulting, management and education services to hospitals, nursing homes, assisted living facilities, facilities for the mentally challenged and state agencies.

ii. Mr. Youles will testify concerning staffing of the facility, compliance with State and Federal Regulations from an operational perspective, and surveys related to the facility operations of the Defendants. He is also expected to express opinions concerning the multiple failures by Defendants in the services rendered to Dorothy Douglas as would relate to the standards of operational care required of a nursing home. He will also be providing testimony related to how the facility was operated by the facility administrators. It is also anticipated that he will opine that the Defendant facility breached minimum recognized nursing home operation community practice standards.

e. Ross Dionne, 700 Washington St., E., Charleston, WV 25337-3762

i. Mr Dionne is a Certified Public Accountant and a Certified Valuation Analyst. He has 30 years experience working in that capacity He has worked as corporate controller for privately held companies and as managing partner for certified public accounting firms. In addition he has done management advisory consulting, business consulting and litigation support. He is currently the Managing Member of Economic Valuation Associates, PLLC.

ii. Mr. Dionne is expected to testify concerning Defendants' corporate structure, Medicare and Medicaid filings, operations, financing, earnings, and net worth.

?? An itemized list of Plaintiff's special damages.

a. plaintiff has recently sent out request to specific health care providers but to date has the following information.

i. Funeral Expenses

ii. Cabell Huntington Hospital \$22,227.15

iii. Hospice of Huntington

iv. West Virginia Division of Medicaid \$ -0-

v. Medicare \$ 8,252.99

12. Plaintiff's proposed stipulations including all medical specials, hospital records, etc.

a. Plaintiff would agree to stipulate to the authenticity and admissibility of all of Dorothy Douglas medical records specifically those from:

i. Cabell Huntington Hospital

ii. Heartland of Charleston

iii. Hospice of Huntington

iv. Heritage Center

b. Plaintiff would agree to stipulate to authenticity as to any document provided by Defendants as to documents maintained by the Defendants.

c. Plaintiff would agree to stipulate to authenticity as to any document provided by Plaintiff during the course of discovery.

d. Plaintiff would stipulate to authenticity as to any records kept by the state related to Heartland of Charleston including:

i. Surveys;

ii. Cost Reports;

iii. Licenses; and

iv. Death Certificate

e. Plaintiff would stipulate to the authenticity as to any billing records as to the health care provides as set out in section (a) above

Respectfully submitted, this the 15th day of July, 2011.

Tom Douglas, Individually and on behalf of the Estate of Dorothy Douglas

McHUGH FULLER LAW GROUP, PLLC

By: <<signature>>

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